132-406

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

Nos. ~~376, 377.~~ 102 103

No. 376.—FRANK HUME, APPELLANT, vs. THE UNITED STATES.

No. 377.—THE UNITED STATES, APPELLANT, vs. FRANK HUME.

APPEALS FROM THE COURT OF CLAIMS.

FILED OCTOBER 1, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

Nos. 376. 377.

No. 376.—FRANK HUME, APPELLANT, vs. THE UNITED STATES.

No. 377.—THE UNITED STATES, APPELLANT, vs. FRANK HUME.

APPEALS FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition, filed June 22, 1885	1	1
Traverse, filed July 6, 1885	4	2
Special plea, filed February 12, 1886	5	3
Replication to special plea, filed April 28, 1886	6	3
Motion of claimant's counsel to suppress depositions filed in behalf of defendants, with certain of said depositions annexed	9	4
Argument and submission of case and of motion to suppress certain testimony	27	21
Findings of fact and conclusion of law	28	21
Opinion of the court	32	25
Final judgment of the court	35	28
Application of claimant for and allowance of appeal	36	28
Application of defendants for and allowance of appeal	37	29
Certificate	38	29

1 IN THE COURT OF CLAIMS.

FRANK HUME
vs.
THE UNITED STATES. } No. 14612.

I.—*Petition.*—*Filed June* 22, 1885.

To the Honorable, the Court of Claims:

The claimant, Frank Hume, respectfully shows to this honorable court, that heretofore, to wit: on the ninth day of August, A. D., 1883, he entered into a certain contract, in writing, with M. L. Joslyn, Acting Secretary of the Interior Department, the said M. L. Joslyn, as such Acting Secretary, then and there acting by due authority of law, for and on behalf of the said defendant, the United States, a duly certified copy of which contract, under the respective seals of the parties as aforesaid, is to the court here shown and marked "Exhibit A."

The claimant further shows, that, by the terms and conditions of said contract on his part entered into, he covenanted and agreed to furnish, during the fiscal year ending June 30th, 1884, such articles as might be required by the Government Hospital for the Insane, near Washington, D. C., being the city of Washington, in the District of Columbia, and as had been accepted in the proposal of said claimant, dated July 16th,
2 1883, to wit: items in the said proposal numbered 2, 9, 19, 32, 42, 56, 71, 78, 79, 89, 90, 91, 97, 102, and 103, in the schedule of groceries, and item 77 for 5 bbls. sweet catawba, at the rates specified in said proposal, the said claimant having, prior to the making of the written contract aforesaid, submitted such proposal, in writing, as required by law, and in due form of law, and the items aforesaid in the proposal aforesaid, such schedules being embraced in and forming a part of such proposal, having duly been awarded by the Acting Secretary of the Interior aforesaid, and by authority of law, to the said claimant, to be by him furnished in the manner aforesaid, within the time aforesaid, and for the purposes aforesaid, the said claimant having submitted such proposal to and having been declared by the proper officers and agents of said defendant to be, and the said claimant, in fact, then and there being the lowest bidder for the furnishing of all and each of the articles embraced in the items aforesaid, contained in the proposal aforesaid, said claimant having entered into competition with divers other persons to furnish such articles for the purpose aforesaid.

Claimant further shows to the court, that after the execution of the contract aforesaid, he complied fully with all and each of the terms and conditions thereof on his part entered into, and within the fiscal year aforesaid. That he furnished under the contract aforesaid to the Government Hospital for the Insane, near Washington, D. C., above-mentioned goods, wares, and merchandise, amounting to the sum of $5,695.89, according to the prices stated in said proposal, and accepted by said defendant, and as provided and established by the terms of said contract. That all of said articles were received by the proper agents and officers of said defendant for the use and benefit of said Government Hospital for the Insane, near Washington, D. C. That claimant has been paid upon his claim of

3 $5,695.89 aforesaid only the sum of $1,663.89. That there is still due and owing from said defendant on said claim to claimant the sum of $4,032.00. That claimant is entitled to recover of said defendant on said claim said sum of $4,032.00, together with interest thereon from the 1st day of July, 1884.

That no action has been had on this claim in Congress or by any of the Departments, otherwise than as above set forth, excepting that the accounting officers of the Interior Department have refused and neglected to pay such balance of $4,032.00 and every part thereof, because, as they allege, the price charged for item 97 in said proposal was excessive, and notwithstanding the charge therefor was based upon the amount stated in said proposal, and accepted by said defendant's officers and agents, and by them incorporated in said contract as aforesaid; and notwithstanding it has been the uniform practice of said defendant acting by and through its departmental officers to rigorously exact literal fulfilment of all terms and conditions of contracts from contracting citizens however injurious and oppressive to such citizens.

That the claimant is the sole owner of this claim, and the only person interested therein; that no assignment or transfer of this claim or of any part thereof or interest therein has been made; that the claimant believes himself justly entitled to the amount herein claimed from the said defendant, after allowing all just credits and offsets, and that the claimant is a citizen of the United States, and that he believes the facts as stated in this petition to be true, and the claimant demands judgment for said sum of $4,032.00, with interest as aforesaid.

FRANK HUME.

COUNTY OF WASHINGTON,
District of Columbia, ss:

Frank Hume, being duly sworn, deposes and says: I am the claimant in this case; I have read the above petition, and the facts therein stated are true to the best of my knowledge and belief.

Sworn to before me and signed in my presence this 18th day of June, 1885.

HOWARD M. NORRIS,
Notary Public.

[The contract, being Exhibit A, is omitted here, being fully set out in the findings of fact in this record.—John Randolph, Asst. Clk., Ct. of Claims.]

4 II.—*Traverse.*—*Filed July* 6, 1885.

And now comes the Attorney-General on behalf of the United States, and answering the petition of the claimant herein denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-

General, in pursuance of the statute in such case provided, denies the said allegations and asks judgment accordingly.

ROBERT A. HOWARD,
Ass't Att'y-General.

5 III.—*Special plea.*—*Filed February* 12, 1886.

And now comes the Attorney-General, on behalf of the United States, and for further answer to the petition of the claimant herein says:

Claimant in the year 1884 agreed to furnish shucks to the Government Hospital for the Insane, in the District of Columbia, at the rate of 60 cents per hundred-weight.

Claimant entered into a written contract with the Secretary of the Interior (being the contract to recover damages for the breach of which this suit is instituted), in which he agreed to furnish (inter alia) shucks at the rate of 60 cents per pound.

This was a clerical error, the real contract being that shucks were to be furnished by claimant to said Government hospital at sixty cents per hundred-weight. The error arose from a mistake in a bid made by claimant and its acceptance by the Secretary of the Interior.

6 Nevertheless claimant attempts to practise a fraud against the United States in attempting to establish an allowance of the claim as made by him, and by his effort to obtain a judgment in this court upon such written contract, as if such mistake and clerical error had not been made, and for the amount due for the shucks furnished, as expressed by mistake in said written contract.

Wherefore the Attorney-General asks for the judgment against claimant in pursuance of section 1086 of Revised Statutes.

ROBERT A. HOWARD,
Assistant Attorney-General.

IV.—*Replication to special plea.*—*Filed April* 28, 1886.

Now comes the claimant, by Robert Christy, his attorney, and for replication and answer to the plea of fraud filed herein on the 4th of September, 1885, says: That he did not in the year 1883 or 1884, or at any other time, agree with the United States to furnish shucks to the

7 Government Hospital for the Insane at the rate of sixty cents per hundred-weight; that he, in answer to the published advertisement, and in accordance with the schedules and specifications thereto attached, delivered to the Secretary of the Interior a proposal to furnish supplies to the said hospital during the fiscal year ending June 30, 1884; that one of the items in said proposal was for shucks, bid for by him at the rate of sixty cents per pound, in accordance with the printed schedule furnished him by the United States upon which to make out his bid; that the said price was the price at which he intended to bid, and that there was no mistake on his part in making out the bid; that the said bid was the lowest bid received for said article, and that he was awarded the contract to furnish that article, among others; that he received three orders during the year for the delivery of different amounts of shucks at different times; that he delivered these shucks in accordance with said orders, and accompanied each delivery with a bill, in which the said shucks so delivered were charged

at sixty cents per pound, the contract price; that no objection or
8 intimation that any mistake had occurred, or that the officers of the Government did not perfectly understand the bid, until after the contract had expired and all the goods had been consumed by the United States; that the said contract contained fifteen other items of goods, which were furnished as ordered, and some items furnished in much larger quantities than the estimated quantity contained on the printed schedule; that upon some of the items the claimant lost money; upon others there was a very small profit; and that upon the whole contract adjusted at contract rates the claimant will not receive more than a fair and reasonable profit.

Claimant denies emphatically any attempt to practise a fraud on the United States, and avers that the whole transaction was in absolute good faith in the ordinary course of business; that there was no inducement or promise made in regard to the matter, except the written proposal of the claimant and the written contract.

ROBERT CHRISTY,
Attorney for Claimant.

9 V.—*Motion of claimant to suppress depositions filed on behalf of the United States.—Filed April* 27, 1886. (*Inserted by request of claimant's counsel.*)

Comes now the claimant, by Roberty Christy, his attorney, and moves the court to strike out the depositions of W. W. Godding, H. H. Potter, and E. M. Dawson, the alleged committee, and of Geo. E. Pack, J. R. Bunting, Sam'l Morgan, W. B. Williams, H. A. Linger, F. K. Walpert, A. W. Weems, C. H. Lears, being all the testimony filed herein on behalf of the United States, and assigns as reasons therefor that the whole of each and every one of the said depositions is irrelevant, and inad-
10 missible, and incompetent, and reference is hereby made to said depositions as a part of this motion.

ROBERT CHRISTY,
Attorney for Claimant.

[Deposition' of George E. Pack, J. R. Bunting, Samuel Morgan, W. W. Godding, exhibits referred to in above deposition; deposition of Edward M. Dawson, deposition of Ziba H. Potter, being depositions referred to and made part of the above motion, and inserted by request of claimant's counsel as specimens of four other depositions of the same class in like manner objected to.—J. R.]

Deposition of George E. Pack, for defendants, taken at Philadelphia, Pa., on the 29th day of December, A. D. 1885.

Defendants' counsel, F. P. Dewees, esq.; claimant's counsel, J. C. Fay, esq.

GEORGE E. PACK, the first witness, being duly sworn as aforesaid, deposed as follows: My name is George E. Pack; my occupation, mattress manufacturer; my age is twenty-four years in November last; my residence is in Philadelphia; that I have no interest, direct or indirect, in the claim which is the subject of inquiry; that I am not related to the claimant.

By F. P. DEWEES, Esq., counsel for the United States:

Question 1. Have you any knowledge of the subject in controversy in this suit?

Answer. No, sir.

Question 2. With whom are you connected in business in this city?

Answer. My mother, under the firm name of Pack & Son.

Question 3. Have you any knowledge of the price of shucks in the years 1883 and 1884?

(Objected to by Mr. Fay as incompetent and immaterial.)

Answer. Yes, sir; but I know them under the name of husks.

Question 4. How did you derive this knowledge of the price of shucks during those years?

(Same objection by Mr. Fay.)

Answer. By what I had bought and used in my own business.

Question 5. You carry on an extensive business, do you not?

Answer. Yes, sir; quite extensive.

11 Question 6. Be kind enough to state the market price of shucks in the city of Philadelphia in the summer and autumn of 1883, and also of 1884.

(Same objection by Mr. Fay.)

Answer. July, 1883, $28 per ton; August, 1883, the same; September, the same; October, 1883, $30 per ton; November, $30; December, $28. In 1884, July, $30; August, $30; September, $29; October, $29 to $31; November, $31; December, $32 per ton.

Question 7. Do I understand that these were the prices you gave for the goods delivered in Philadelphia? And, if so, state where you purchased them and from whom.

(Same objection by Mr. Fay.)

Answer. Yes, sir; the prices given were for goods laid down in Philadelphia from Fred Walpert & Co. and I. M. Nuger, Baltimore, Md.

Question 8. What was the character of the shucks as to quality?

(Same objection by Mr. Fay.)

Answer. They were of the very best quality of machine-hackled shucks which we could get.

Question 9. Do you know whether or no unhackled shucks were cheaper or dearer than hackled shucks?

Answer. Well, I don't know positively, but the supposition is that they were, because in hackling them there is always considerable loss, such as butts and cobs, which is of no use except for manure, as well as the cost of hackling, baling, &c.

Question 10. Did you ever hear of hackled or unhackled shucks selling for $1,200 per ton?

(Same objection by Mr. Fay.)

Answer. No, sir.

Cross-examined by Mr. FAY:

Cross-question 1. Do you know anything about the price of shucks in Washington, D. C.?

Answer. No, sir.

Cross-question 2. In giving the prices, as stated in your examination-in-chief, do you include the freight and the cost of hauling from the depot to your place of manufacture?

Answer. I give the cost of freight, but not of hauling from the depot. The hauling would be $1 per ton additional.

Cross-question 3. Are the prices given what you bought or what you sold shucks for?

Answer. What I gave for them.

Cross-question 4. What did you sell them for?

Answer. That depends a great deal upon the quantity. Five cents by the single pound, or at $8 to $10 per ton advance upon the cost price.

Cross-question 5. Is there any difference in price between hand-hackled and machine-hackled shucks?

Answer. I do not know the difference, but there is a difference in favor of hand-hackled.

Cross-question 6. Is there any difference in price on account of the age of the shucks?

12 Answer. Husk one year old I consider as valuable as five-year old; that is my opinion; the opinion of the trade I do not know.

Cross-question 7. Are there different grades of husks?

Answer. Yes, sir.

GEO. E. PACK.

Sworn and subscribed before me this 29th day of December, A. D. 1885.

[SEAL.] ISAIAH MATLACK,
Notary Public.

Deposition of John R. Bunting, for defendants, taken at Philadelphia, Pa., on the 29th day of December, A. D. 1885.

Defendants' counsel, F. P. Dewees, esq.; claimant's counsel, J. C. Fay, esq.

At the same place and on the same day, in the presence of the same counsel, John R. Bunting, a witness on behalf of the United States, was produced, and having been by me in like manner sworn, deposed and said that his name is John R. Bunting; his occupation, bedding supplies; that he is fifty-six years of age, and place of residence is in Philadelphia; that he has no interest, direct or indirect, in the claim which is the subject of inquiry, and that he is not related to the claimant. And thereupon the said John R. Bunting was examined by F. P. Dewees, esq., counsel for the United States, and in answer to interrogatories, testified as follows:

Question 1. Have you any knowledge of the matters in controversy in this suit?

Answer. No, sir.

Question 2. Where is your place of business in the city, and are you extensively engaged in business?

Answer. 219 South Second street; we are extensively engaged in business.

Question 3. Have you, as a purchaser of shucks, a knowledge of the market price of shucks in Philadelphia in the year 1883 and 1884? And, if so, please state such value in the summer and autumn of such years.

(Objected to as incompetent, immaterial, and inadmissible, to vary the written contracts between parties, by Mr. Fay.)

Answer. I have a knowledge, in 1883, April, May, and June, we bought at $27 to $30 per ton; $27 in car-load lots; in smaller quantities we paid as high as $30 per ton; that was the highest price we paid that year. In the fall of 1883 we did not buy any, as we had laid in a stock, but that was about the price. In 1884, in the spring, April, May, and June, we bought from $26 to $29 per ton; in the fall of 1884 the price stiffened up a little, and brought as high as $30 to $31, but we did not buy any, or if any, very little; but I have a knowledge of the price.

Question 4. What was the quality of the shucks you purchased?

Answer. They were the ordinary machine-hackled.

Question 5. Did you hear of the sale of any shucks that year at the rate of $1,200 per ton?

(Objected—same objection.)

Answer. No, sir.

13 Question 6. State whether or no you would not consider such a price as ridiculous?

(Same objection.)

Answer. Yes, sir.

Question 7. Where did you make your purchases?

(Same objection.)

Answer. Some in Baltimore; some near Petersburg, Va.; some near Richmond, Va.; some from Delaware and Maryland; a good many from Sexton, on Second street, near Walnut street, Philadelphia.

Question 8. State whether the prices named by you were the prices delivered in Philadelphia.

(Same objection.)

Answer. The prices include freight, hauling, and everything, delivered to the store.

Cross-examined by Mr. FAY:

Cross-question 1. Are the prices which you have given the price at which you bought or at which you sold?

Answer. The prices at which we bought them.

Cross-question 2. Do you sell to the consumers or to the trade?

Answer. We sell mostly to the trade.

Cross-question 3. How much in addition to the prices which you have given do you sell to the trade?

Answer. By the ton, from $35 to $40; by the bale, at the rate of $50 per ton.

Cross-question 4. Would $12 per ton be a fair or reasonable price for first-quality hackled shucks, delivered 3 miles from the depot, at any time during 1884, to a consumer?

Answer. No, sir; I should not think they could be delivered, if good husks.

Cross-question 5. Would you have been willing to have delivered them for less than three times that price?

Answer. Yes, sir; I would have delivered them at from $32 to $33 per ton, on a contract with good parties, if delivered in quantities of a full load, otherwise the price would have been increased the price of cartage, if delivered in the city of Philadelphia; if to be delivered in another city the price would be increased by the cost of freight and cartage.

Redirect:

Question 1. Would you, or would you not, regard a bid for unhackled shucks in the years 1883 and 1884, at $12 a ton as unreasonably low?

(Same objection.)

Answer. Yes; I should think it would be a very reasonable price, rather a low figure.

Question 2. Have you any knowledge of the price of unhackled shucks by the pound?

(Same objection by Mr. Fay.)

Answer. I have no positive knowledge; what I know is only from hearsay.

Question 3. Is your hearsay knowledge derived from your intercourse with the trade or not?

(Same objection, and the additional objection that it calls for hearsay.)

14 Answer. From the manufacture.

Question 4. From your knowledge so derived, what is a fair and reasonable price per pound for unhackeled shucks?

(Same objection as to question 3.)

Answer. I should suppose from 1 to 1½ cents per pound delivered. I should think from 1 cent to 1¼ cents per pound would be a fair price for them; in the field from one-half to three-quarters of a cent per pound is what I understand the manufacturers pay for them.

J. R. BUNTING.

Sworn and subscribed to before me this 29th day of December, A. D. 1885.

[SEAL.] ISAIAH MATLACK,
Notary Public.

Deposition of Samuel Morgan, for defendants, taken at Philadelphia, Pa., on the 29th day of December, 1885.

Defendants' counsel, F. P. Dewees, esq.; claimants' counsel, J. C. Fay, esq.

At the same place and on the same day, in presence of the same counsel of both parties, SAMUEL MORGAN, the witness on behalf of the United States, was produced, and having been by me in like manner sworn, deposed and said his name is Samuel Morgan; his occupation is bedding and feather business; his age is sixty-four years; that his place of business is No. 329 and 331 North Second street, Philadelphia; that he has no interest, direct or indirect, in the claim, and that he is not related to the claimant. And thereupon the said Samuel Morgan was examined by F. P. Dewees, esq., counsel for the United States, and, in answer to interrogatories, testified as follows:

Question 1. Have you any knowledge, derived through your business, of the market price of shucks delivered in the city of Philadelphia in the summer and autumn of the years 1883 and 1884; and, if you have, will you please state the prices for those years?

(Objected to by Mr. Fay as incompetent, immaterial, and inadmissible, to vary the contract sued on in this case.)

Answer. They run from $25 to $45 per ton.

Question 2. Please state, if you know, the cause of the variance, and as to whether it was caused by a difference in the quality of the goods or in the time of delivery.

(Same objection by Mr. Fay.)

Answer. In time of delivery, in the spring of the year, they are generally plenty and in the fall of the year they are more scarce, and the price advances.

Question 3. From whom did you purchase your shucks in 1883 and 1884?

(Same objection by Mr. Fay.)

Answer. The most of them from Bucks County farmers; some from the South—Richmond, Petersburg, and Baltimore.

15 Question 4. Which were the most expensive, those from the South or those from the Bucks County farmers?

(Same objection by Mr. Fay.)

Answer. Southern husks generally regulate the price; there is no difference.

Question 5. Do you refer in prices to hackled or unhackled?

(Same objection by Mr. Fay.)

Answer. Hackled.

Question 6. What was a fair price for unhackled shucks?

(Same objection by Mr. Fay.)

Answer. I never bought any unhackled husks.

Question 7. Have you any knowledge derived from your intercourse in the trade? If so, state it.

(Same objection by Mr. Fay.)

Answer. I have heard them say they paid from $10, $12, up to $18 per ton, delivered at Mr. Wolpert's factory in Baltimore.

Cross-examined by Mr. FAY:

Cross-question 1. Do you know anything about the price of shucks in Washington, D. C.?

Answer. I do not.

Cross-question 2. You never bought any from that point?

Answer. No; there are no manufacturers there that I know of.

Cross-question 3. The prices that you have given in your testimony is what you gave for them to use in the trade, are they not?

Answer. Yes; that is the price we paid for them to use in our trade as manufacturers.

Redirect:

Question 1. State whether or not the Southern husk is esteemed the best.

Answer. It is considered the best; the leaf is lighter.

Question 2. Do you know anything further relative to this case?

Answer. I do not know anything about it.

SAMUEL MORGAN.

Sworn and subscribed before me this 29th day of December, A. D. 1885.

[SEAL.] ISAIAH MATLACK,
Notary Public.

Deposition of Dr. W. W. Godding, for defendants, taken at Washington, D. C., on the 10th day of December, 1885.

Defendants' counsel, F. P. Dewees, esq.; claimant's counsel, Messrs. Fay and Christy.

Mr. FAY. Before we proceed to take any depositions, the claimant objects to the taking of depositions at this time, because the time within which depositions may have been taken has expired.

Dr. W. W. GODDING, having been produced as a witness on behalf the defendant, was by me sworn, before any question was put to him,
16 to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and thereupon deposed and said that his name is W. W. Godding; that his occupation is that of a physician; that he is fifty-four years of age; that his place of residence is Washington, D. C.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause; and that he is not related to the claimant.

By Mr. DEWEES, the counsel for the defendant:

Question 1. You are superintendent of the Government Hospital for the Insane, are you not?

Answer. I am.

Question 2. State whether or no any contract was ever made for supplies to that hospital, to your knowledge, with Frank Hume, the claimant in this case?

Answer. I was on a committee of award of contracts that recommended a contract to be made with Frank Hume. That contract was made by the Interior Department, and did not pass into my hands. I can not say from having actually seen the contract.

Question 3. Did the committee who awarded the contracts fix the prices which were to be paid for the several articles, and, if so, how?

Mr. FAY. I object to that question upon the ground that no committee has any power to fix any prices, and further that all negotiations were merged in the written contract between the parties.

Answer. The committee recommended that contracts be awarded at certain prices, those prices being named in the bids of the parties applying for the contracts.

Question 4. There was a contract entered into, as shown by claimant's petition on the 9th day of August, 1883, between Frank Hume and M. L. Joslyn, Acting Secretary of the Interior. When that contract was made, how and by whom were the bids first accepted?

Mr. FAY. I object to that as immaterial, and for the further reason that the records would show, and that would be the best evidence.

Answer. The bids were submitted to a committee of awards, appointed by the Secretary of the Interior, consisting of Mr. Dawson, Dr. Potter, and myself. Dr. Potter was connected with the Pension Office. I haven't his initials. We were the committee. To that committee were submitted all bids, and they considered those bids, and made the recommendation of awards, considering the price, the quality of the article, where samples were required, and the reasonableness of the price.

Question 5. State whether or no the Secretary of the Interior inquired

into price of articles, or whether he made his contract according to the recommendation of the committee, to which you have referred.

Mr. FAY. I object to that question as incompetent, and for the further reason that the report of the committee, if such a report was made, should be presented as the best evidence of it.

Answer. I know nothing of the action of the Secretary of the Interior in regard to examination of the figures. I know that he accepted the recommendation of the committee; I think in every instance.

Question 6. Do you know whether or no it was the custom then for the Secretary of the Interior to award contracts in accordance with the recommendations of the committee to which you have referred.

17 Mr. FAY. I object to any evidence on the subject of custom. The law provides how contracts may be awarded, and any custom in violation of law is not competent evidence.

Answer. I did not represent the Interior Department on this committee; I represented the hospital. I am unable to say what is the custom of the Secretary of the Interior outside of awards for the hospital. I know that in making the awards for the hospital it has been customary for the Secretary of the Interior to follow the recommendation of the committee.

Mr. FAY. The answer is objected to for the same reason.

Question 7. Now, will you state as to whether or no the bids made for goods to be furnished to the hospital were first referred to this committee, and as to whether bids were made in accordance with advertisements according to law.

Mr. FAY. I object to that as incompetent; and for the further reason that any bids that were made were in writing and would show for themselves their contents.

Answer. Bids were made in accordance with the proposals, in accordance with the law, and I personally opened them, so that I know. Bids that were addressed to the Secretary of the Interior were put into the hands of the committee for the purpose of opening.

Question 8. State whether or no the usual custom prevailing as to bids was followed in the case of the bid of Frank Hume, the claimant in this case, and his bid considered along with other bids by that committee.

Mr. FAY. I object to that question for the same reason.

Answer. The bid of Frank Hume was received, and was considered by this committee with the other bids.

Question 9. Do you know whether it was a fact that the recommendation of the committee was followed in the case of the bid of Frank Hume?

Mr. FAY. That is objected to as incompetent and immaterial.

Answer. It was.

Question 10. State whether that committee had made any error or mistake in the acceptance of any bid made by Frank Hume for any article; and, if so, how such error or mistake occurred.

Mr. FAY. I object to that as incompetent and immaterial. Whether the committee made any mistake or not is utterly immaterial, and if they did make a mistake it is utterly immaterial what their mistake was. I object upon the further ground that the court has no jurisdiction to reform any contract, even if a foundation for reformation of the contract was laid. The contract is not with the committee, but with the Secretary of

the Interior. I object for the further reason that this is an attempt to explain a written report, which is not produced, and which is the best evidence of the committee's report.

Answer. The committee recommended an award of shucks—corn husks—at 60 cents per pound. As chairman of that committee, and one of the members, I affirm that we made an error in recording the price per pound which appears in the recommended award, 60 cents a pound, while I supposed it to be 60 cents per hundred-weight. It had been my custom before that time to purchase shucks in the open market, according to necessities, and I always paid for them by the hundred-weight pre-
18 cisely as I bought straw; precisely as I recommended in this contract, that we should not award straw at 60 cents per pound. One of the facts which led me to make up my mind was what I had paid for shucks before. The same fact entered into consideration in the case of straw, and I refused to pay it. The further action that I took, as disbursing agent, in refusing to pay the bill, was the evidence that I regarded it as an error.

Mr. FAY. I make the same objection to the answer. So much of the answer as undertakes to give the argument of the witness, and is not responsive to the question, is also objected to.

Question 11. Was the price recommended by the committee in accordance with the market price of shucks at that time?

Mr. FAY. That is objected to as incompetent and utterly immaterial.

Answer. It was not.

Question 12. State whether or no you received any information from any source as to what was the market value of material, say in July, 1884.

Mr. FAY. That is objected to as incompetent, and for the further reason that it calls for the hearsay of the witness.

Answer. I did; I returned the memorandum bill to Mr. Hume for correction, supposing it was a mere clerical error. He returned the account, stating that that was the contract price. I then wrote to two leading houses, dealers in hair, mattress material, shucks, &c., in New York City, Messrs. Glover & Willcomb, and Mellen & Co. That was some time in July. I received answers from those gentlemen as to prices.

Mr. FAY. I object to the answer for the reason that the witness is undertaking to give the results of communication to him, which are utterly incompetent and immaterial.

Question 13 (submitting papers to witness). State whether or no the letters you hold in your hands are the original letters you received?

Answer. I recognize them as those letters.

Question 14. Will you prepare copies and attach them to your depositions, and mark them Exhibits 1 and 2?

Mr. FAY. To that we object, on the ground, in the first place, that, if they are evidence at all, the testimony of the writers should be taken to prove the truth of them, and, in the second place, they are incompetent to affect a contract between the claimant and the Government; we further object that there is no evidence that they are genuine letters, and that both of them are dated more than a year after the contract.

Answer. I will do so.

(It is agreed that these letters shall have the same force and effect as the originals, if produced, and counsel for claimant will insist upon the same objections as to compentency and relevancy.)

Question 15. In fixing the price of the shucks you confused pounds with hundred-weights?

Mr. FAY. That is objected to as incompetent and immaterial.

Answer. We did.

Mr. FAY. You mean "I did."

The WITNESS. No, the committee did.

Mr. FAY. You are swearing to what somebody else did.

The WITNESS. We debated this question and decided it, and I suppose it is competent for me to answer.

19 By Mr. DEWEES:

Question 16 (resuming). You did debate the question?

Answer. Yes, sir.

Question 17. And discussed upon this matter of hundred-weight?

Answer. I recollected distinctly what I had been paying per hundred; yes, sir.

Question 18. State whether or not you were in the habit of purchasing supplies for the Hospital for the Insane, and as to whether you had purchased shucks prior to this time.

Mr. FAY. That is objected to as immaterial.

Answer. As the disbursing officer of the hospital, I have been accustomed to purchase supplies for the hospital, and had never previously contracted for them, but had bought them in open market.

Question 19. State, if you know, about what rate you had been paying for shucks per hundred-weight.

Mr. FAY. The question is objected to for incompetency. You are not entitled to vary the terms of a written contract by that class of evidence.

The WITNESS. You ask me the question in regard to the price I had been in the habit of paying before this time?

Mr. DEWEES. Before and subsequently.

Answer. From 40 cents to $1 per hundred—unhackled shucks. The shucks that I purchased were brought directly to the market from the country adjoining, as a rule.

Question 20. Will you state, then, why you regarded the bid at 60 cents per pound as 60 cents per hundred-weight?

Mr. FAY. I object to that as incompetent.

Answer. Automatically; because that was the unit on which I had purchased shucks hitherto. I presume I did not look at the wording, "60 cents per pound."

Mr. DEWEES. You can cross-examine the witness.

Mr. FAY. The claimants waive nothing of their objections as to the time of taking this testimony, or as to its competency, and cross-examine the witness *de bene esse*.

Cross-examined by Mr. FAY:

Cross-question 1. You had nothing whatever to do with making the contract, did you?

Answer. No, sir.

Cross-question 2. After the contract was made did it become your duty to order the goods from the contractor?

Answer. It did.

Cross-question 3. And you made the orders for the various items of supplies that were furnished, did you not?

Answer. I did.

Cross-question 4. How many times did you order shucks from this contractor under his contract?

Answer. My recollection is once.

Cross-question 5. Are you positive of that?

Answer. No, sir; I am not.

Cross-question 6. Was it not more than once?

Answer. I think not; my books will show.

Cross-question 7. Was it not twice?

Answer. I do not recollect it.

Cross-question 8. I wish you would bring your book and complete your answer as to the number of times when you sign your deposition.

Answer. I was going to say that I could not possibly recall absolutely whether it was once or twice without referring to my books.

Cross-question 9. Now, doctor, upon thinking over the matter, can you not recollect the fact that these shucks were not all delivered at one time?

Answer. I am inclined to think you are right; that they were delivered at two times; it was all during the last of the year.

Cross-question 10. Now, is it not the fact, that you made no objection in regard to the price of the first lot until after the second lot had been delivered?

Answer. I made no objection until my attention was called to the vouchers for the payment of the bill.

Cross-question 11. That was the first time you ever thought of any mistake having been made by the committee?

Answer. The first time that it was brought to my notice was by the memorandum of the price. I knew the goods were bought under contract, so that I did not examine the prices myself, but directed the clerk to examine and see that the prices corresponded with our contract-list. That was as far as I thought it necessary to go. When I came to the payment of the bill, I examined the items and saw a mistake had been made.

Mr. CHRISTY. I object to the answer as not responsive to the question, and as a ratiocination.

Cross-question 12. Did you see the goods?

Answer. I did.

Cross-question 13. Were they of good quality?

Answer. Yes; not extraordinary, but of fair quality.

Cross-question 14. Were they not hackled?

Answer. They were.

Cross-question 15. You had never purchased any shucks that had been hackled?

Answer. I think I had; but our usual purchases were unhackled shucks; and we hackled them ourselves. I think at one time I bought hackled shucks.

Cross-question 16. The prices you gave were for unhackled shucks?

Answer. Yes, sir; the contract makes no statement as to whether they were to be hackled or unhackled.

Cross-question 17. But the goods that were delivered were hackled and of fair quality?

Answer. Yes; of fair quality.

Cross-question 18. Have you ever been a dealer in shucks?

Answer. I have bought shucks a great many times. I never have sold them.

Cross-question 19. You bought from country people, you say?

Answer. I have bought them in bales in the market here from country people.

Cross-question 20. Do you know what the freight would be on a bale of shucks from Boston, delivered at the insane asylum in this city?

Mr. DEWEES. That is objected to as immaterial.

21 Answer. These letters are from New York.

Cross-question 21. Do you know what the freight on a bale of shucks from New York, delivered at the insane asylum, would be—the freight and the cartage from the depot to the insane asylum?

Answer. I could not answer what it would be. I can ascertain what the rates for freight are, but I can not answer from recollection.

Cross-question 22. Can you tell what the rate of cartage would be from the depot to the insane asylum? About how far is it from the depot to the insane asylum?

Answer. It is about 3 miles.

Cross-question 23. These goods were delivered by Mr. Hume at the insane hospital, and without expense to the Government, were they not?

Answer. Yes, sir.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he do, to state it, says: "I know nothing material beyond what I have stated."

W. W. GODDING.

Sworn to and subscribed before me this 11th day of December, 1885.

H. H. ALEXANDER,
U. S. Commissioner.

EXHIBIT No. 1.

NEW YORK, *July* 28, 1884.

Mr. W. W. GODDING,
Supt. Gov't Insane Hospital, Washington, D. C.:

DEAR SIR: Your favor 26th inst. is at hand. We quote our best grade husk (R. S.) at $50.00 per ton, and our second grade (B.) at $40.00; all F. O. B. in New York.

These goods are well hackled and baled. They are a trifle firmer in price than at the same time last year.

Yours, truly,

MELLEN & CO.,
KENT.

EXHIBIT No. 2.

NEW YORK, *July* 28, 1884.

W. W. GODDING, Esq.:

DEAR SIR: We are selling the Virginia and Maryland hackled husk at 1¾c. per lb., or $35 per ton, and this has been our price for more than a year. It will probably be lower in price this fall.

Yours, truly,

GLOVER & WILLCOMB,
ABELL.

22 *Deposition of Edward M. Dawson, for defendants, taken at Washington, D. C., on the 10th day of December, A. D. 1885.*

Defendants' counsel, F. P. Dewees, esq.; claimant's counsel, Messrs. Fay and Christy.

EDWARD M. DAWSON, having been produced as a witness on behalf of the defendants, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth, relative to the said cause, and thereupon deposed and said that his name is Edward M. Dawson; that his occupation is that of chief of the patents and miscellaneous division in the office of the Secretary of the Interior; that he is forty-two years of age; that his place of residence is Washington, D. C.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause, and that he is not related to the claimant.

Mr. FAY (interposing). I make the same objection to this deposition as to the former.

By Mr. DEWEES:

Question 1. State whether or no you were on the committee to whom bids for supplies to the Government Hospital for the Insane were referred along with Dr. Godding and Dr. Z. H. Potter, and to which committee the special claims were referred which resulted in a contract made by Frank Hume with M. L. Joslyn as Acting Secretary of the Interior on the 9th day of August, 1883, which agreement is filed with the claimant's petition in this case as an exhibit.

Answer. I was appointed as a member of that committee, and acted as a member.

Question 2. State what occurred, if you remember, relative to any bid for shucks.

Mr. FAY. I object to that question upon the ground of its incompetency. The proceedings before the committee, which was matter not authorized by law, is utterly immaterial, and whatever conversation or discussion they had is incompetent. All negotiations were merged in the written contract between the parties and all their conclusions were announced in a written report, which is the best evidence of itself and its contents.

Answer. Amongst the proposals for supplying goods to the asylum was the proposal from Mr. Frank Hume, and he made a bid for the article of shucks. He was the only bidder for that article. When the bid was considered we had not the proposal immediately before us, the bids having all been scheduled, and on the schedule appeared the sum "60 cents."

Mr. FAY (interposing). I object to the witness giving a statement of the contents of a written paper.

Answer (continuing). The price was scheduled at 60 cents without any memorandum on the page whether the price was per pound or per hundred-weight. But as a member of the board, I can say positively that it was my understanding in awarding the item of shucks to Mr. Hume on his proposal that the price was to be 60 cents per hundred, and not 60 cents per pound.

Mr. FAY. The answer is objected to for the further reason that it undertakes to give the understandings of the witness and his conclusions, and not facts; and for the same reason that the question is objected to.

23 Question 3. State whether or no, before that committee, the price of shucks was discussed.

Answer. Yes, sir.

Question 4. Was the price of shucks discussed independent of the schedule, or from any knowledge of the price derived from the schedule?

Mr. FAY. I make the same objection to both of these questions—as incompetent and immaterial as to what happened before this extra-official committee.

Answer. I had no knowledge myself as to the price of shucks, and the inquiry was made either by myself or Dr. Potter, which drew out the remark from Dr. Godding, the other member of the board, that that was not very far from the price he had paid for shucks; and I remember he stated that it was his impression that that price must be for hackled shucks.

Mr. FAY. So much of the answer as undertakes to give the conversations or impressions of any member of this committee is objected to as incompetent.

Question 5. In the discussion before that committee, was, at any time, the price per pound referred to, or was it the price per hundred?

Answer. The price per pound was not referred to at all.

Question 6. It was the price per hundred?

Answer. The price per hundred.

Mr. FAY. The same objection to the questions and answers.

Question 7. Then in awarding the contract for shucks to Frank Hume, state whether or no the price fixed at 60 cents per pound was a clerical error or not?

Mr. FAY. I object to that. In the first place, for the reason that the witness does not claim to have made an award of the contract; and in the second place, that it asks the witness for a conclusion and not a fact, and for the additional reason that the testimony is incompetent and inadmissible.

Answer. In recommending the award, I am satisfied the committee intended to recommend an award of the item of shucks to Mr. Hume at 60 cents per hundred-weight.

Mr. FAY. The answer is objected to for the same reason, and for the further reason that the report of the committee is in writing.

Question 8. State whether or not the report made by the committee to the Secretary of the Interior was in writing.

Answer. My impression is that the committee did report in writing to the Secretary of the Interior, submitting with their report a copy of the schedules, with the prices set opposite at which they recommended the awards to be made.

Question 9. Can you furnish a copy of that report and attach it to your deposition, marking it A?

Answer. I am not sure, sir; I will try to find it.

Mr. FAY. I object to the witness attaching anything to his deposition that is not presented until counsel for claimant has an opportunity to inspect it.

Question 10. You will furnish the commissioner, if possible, a copy of that report.

Answer. I am not sure whether it is on the files; I will furnish it if it is.

24 Question 11. Do you know anything about the price of shucks?

Answer. No, sir.

Question 12. Your knowledge of the price, then, was derived from Dr. Godding?

Answer. Yes, sir.

Claimant's counsel declined to cross-examine.

Mr. FAY. We give notice to the attorney of the United States that upon the filing of this deposition we will move to suppress it as incompetent and immaterial.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he do, to state it, says: No, sir.

E. M. DAWSON.

Sworn to and subscribed before me this 11th day of December, 1885.

H. H. ALEXANDER,
United States Commissioner.

The witness having, as he states, before signing his deposition, made a search for the report of the committee of award referred to in his deposition and not being able to find it, can not attach the same hereto.

H. H. ALEXANDER,
United States Commissioner.

Deposition of Dr. Ziba H. Potter, for defendants, taken at South Bethlehem, Pa., on the 28th day of December, A. D. 1885.

Defendant's counsel, F. P. Dewees, esq.; claimant's counsel, John C. Fay, esq.

Dr. ZIBA H. POTTER, having been produced as a witness on behalf of the defendant, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said that his name is Dr. Ziba H. Potter; that his occupation is that of United States special pension examiner; that he is forty-nine years of age; that his place of residence is Bethlehem, Pa.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause, and that he is not related to the claimant.

By the COUNSEL FOR THE DEFENDANT:

Question 1. State where you resided in 1883–'84.

Answer. Washington, D. C., where I was a medical examiner in the Pension Office.

Question 2. State whether you have any knowledge of the bid made by Frank Hume, in 1883, for supplies to the Government Hospital for the Insane, near Washington, and if you have, what were your relations to or regard to it.

(Objected to by Mr. Fay upon the ground that all negotiations were merged in the written contract between Mr. Hume and the United States, and the evidence is incompetent to vary that contract, and is immaterial.)

25 Answer. I was detailed by the Secretary of the Interior to act as one of a committee of three to open the bids made for the Government Hospital for the Insane, both in 1883 and 1884. The committee met pursuant to appointment and notice to bidders, and proceeded to open in public and to read the proposals made. To the best of my memory the different items called for by the Government for the use of the Hospital for the Insane were printed in schedules, or lists, and such schedules or lists were furnished to the parties applying for them and desiring to bid. Mr. Hume made a bid for corn shucks. To the best of my memory the schedules read "so much per pound;" Mr. Hume's bid was 60 cents, which the committee understood to be a bid per the hundred-weight. That was generally understood by the committee; and it was so generally understood because 60 cents was a close bid per hundred-weight. By a close bid, I mean it was a fair and cheap market price for shucks per hundred-weight. Of course, the committee did nothing but pass upon the proposals, and the contract was made by the Secretary of the Interior with Mr. Hume. I know nothing further in regard to the awarding of the contract. The committee regarded the price of 60 cents per pound for shucks as simply preposterous.

(Objected to by Mr. Fay for the same reason as the question, and so much of the answer as undertakes to give the contents of written papers or the suppositions or imaginations of the committee is objected to as improper, incompetent, and immaterial.)

Question 3. State who were the members of the committee.

(Objected to by Mr. Fay as incompetent and immaterial.)

Answer. The members of the committee were myself, Dr. Godding, of the Hospital for Insane, and Mr. Dawson, of the Interior Department.

Question 4. State whether or no it was your duty, assigned to you by the Secretary of the Interior, to open the bids and to determine the best bids made, for the purpose of advising him in making the contract; or if not, what was the object and duty of the committee?

(Objected to by Mr. Fay as incompetent, immaterial, and leading in form.)

Answer. The duty of the committee, as I understood it, was to open the bids, examine the goods offered for examination, and to recommend to the Secretary what bids to accept.

Question 5. State whether or no the price of shucks was discussed upon the bid made by Mr. Hume.

Answer. To the best of my memory it was discussed in and by committee.

Question 6. State whether or no the committee intended to recommend the acceptance of a bid for shucks at the rate of $1,200 a ton.

(Objected to as incompetent, immaterial as to what the intention of the committee was, and for the further reason that the report of the committee was in writing, and will speak for itself.)

Answer. The committee never intended to recommend the acceptance of any such bid.

Question 7. If such a recommendation was made, state whether or no it was a mistake.

(Objected to for the same reasons above given.)

Answer. It was clearly and certainly a mistake, and personally I never did, nor ever intended to make any such recommendation.

26 Cross-examined by THE COUNSEL FOR THE PLAINTIFF:

Cross-interrogatory 1. Did you ever deal in shucks?

Answer. No, never.

Cross-interrogatory 2. At the time you served on this committee were you familiar with the market price of this article?

Answer. Only so far as we were informed by Dr. Godding, who investigated the question for the committee.

Cross-interrogatory 3. Then your testimony as to the market price of this article is based upon what Dr. Godding said about it?

Answer. My knowledge as to the price of shucks at the time was dependent on what Dr. Godding reported to the committee. I made no personal investigation, but depended upon Dr. Godding's report. It was not customary for each member to make investigation on each point or the price of each article, but would depend upon each other and the comparative value of each sample offered.

(So much of the above answer as is not responsive to the question is objected to.)

Cross-interrogatory 4. Were the duties of this committee defined by written instructions of departmental regulations?

Answer. They were written instructions.

Cross-interrogatory 5. Did you make a written report to the Secretary?

Answer. To the best of my memory we did.

Cross-interrogatory 6. Did you make any other except a written report to the Secretary?

Answer. Do not remember.

Cross-interrogatory 7. When you stated that Mr. Hume made a bid for shucks, did you mean that that was a separate and distinct bid, or that it was an item among many other items in his bid?

Answer. It was simply an item among other items, but I can't remember.

Cross-interrogatory 8. Have you any recollection as to how many of the items of his bid you recommended for rejection and how many for acceptance?

Answer. I have no recollection on that point.

Cross-interrogatory 9. Do you remember whether there were any other items of Hume's bids recommended for acceptance?

Answer. I do not.

Cross-interrogatory 10. Do you remember if any other item of his bid was discussed?

Answer. No; I do not remember.

Cross-interrogatory 11. Did you report to the Secretary that you supposed the price given by Mr. Hume was by the hundred-weight instead of by the pound?

Answer. I do not remember.

Cross-interrogatory 12. Do you remember that the Secretary's schedule and advertisements required the bid to be by the pound?

Answer. I think the schedule called for the bids per pound.

Cross-interrogatory 13. Did Mr. Hume say anything to you, or to any member of the committee in your presence, on the subject of the bid on that item?

Answer. No; not to my remembrance.

Cross-interrogatory 14. Did you apply to Mr. Hume for any information on that point?

Answer. No; the whole subject was left in the hands of Dr. Godding.

Cross-interrogatory 15. Do you know anything further?

Answer. No; I do not think that I do.

ZIBA H. POTTER.

27 VI.—*Argument and submission of case and of motion to suppress certain evidence.*

At a Court of Claims held in the city of Washington on the 28th day of April, A. D. 1886.

Mr. Fay, for the claimant, filed a motion to strike out certain depositions from the record. The case was then argued by Mr. Fay for the claimant and by Mr. Dewees for the defendants and submitted.

28 VII.—*Findings of fact and conclusion of law.—Filed by the court May 3, 1886.*

This case having been heard before the Court of Claims, the court from the evidence finds the facts to be as follows:

I.

On the 16th day of June, 1883, the Secretary of the Interior advertised for proposals for furnishing to the Government Hospital for the Insane supplies for the fiscal year ending June 30, 1884, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 16, 1883.

Sealed proposals to furnish such miscellaneous supplies as may be required by the Government Hospital for the Insane during the fiscal year ending June 30, 1884, will be received until 12 m. Monday, July 16, 1883.

Proposals must be made in duplicate on the forms furnished by the Department, and be accompanied by a certified check or draft for $500 upon some United States depository or national bank, payable to the order of the Secretary of the Interior, which check or draft shall be forfeited to the United States in case any bidder receiving an award shall fail to execute promptly a contract, with good and sufficient sureties, according to the terms of his bid; otherwise to be returned to the bidder. Bids not accompanied by a certified check or draft will not be considered.

Each proposal must give the names of all parties interested in or parties to it, together with their places of business and post-office addresses. If to be represented by an agent, his name and address should be given.

All articles to be of the best quality. Samples will be required as specified in the schedule, and each sample should be marked to show the name of the bidder, number of the item, and price.

All articles will be subject to rigid inspection, and such as do not conform strictly to the requirements of the contract will be rejected. The decision of the superintendent of the hospital upon this point to be final.

Articles furnished under the contract must be delivered at the hospital in such quantities as may be from time to time ordered by the superintendent, and in the usual trade packages, without any charge for delivery or for packages.

Payments will be made monthly for such articles as may be delivered in conformity with the contract and accepted by the superintendent.

The fresh beef must be all bullock meat, good in quality and condition, fit for immediate use, and from fore and hind quarter meat proportionately. Sides to weigh not less than three hundred (300) nor more than three hundred and fifty (350) pounds. Necks must be cut off at fourth vertebral joint, and the breast trimmed down; shanks of fore quarters must be cut off at 4 inches above the knee-joint, and of hind quarters 8 inches above the hock-joint. Necks, shanks, and kidney tallow to be excluded from delivery, as well as meat from bulls, stags, and diseased cattle.

The fresh mutton must be good, fat, and marketable, from wethers over one and under three years old. The carcasses must be trimmed as follows, and the average weight in that condition must not be less than forty pounds: The heads must be cut off at the first vertebral joint; the shanks of fore quarters at the knee-joint and of hind quarters at the hock-joint.

The bacon must be from well-fattened hogs. It shall consist of pieces of medium weight and thickness, perfectly cured, slowly and
29 thoroughly smoked, dry, and firm. No soft, moist, or spongy pieces will be received. The backbone and breast-bone to be taken out, and hench-bone to be sawed down smooth and even with the face of the side. Feather or blade bone not to be taken out; edges to be smooth.

The hams must be of the best quality, weighing from eight (8) to fourteen (14) pounds each, averaging ten (10) pounds, neatly and closely trimmed, perfectly cured, slowly and thoroughly smoked, cut short, well rounded at the butt, properly faced, cut just above the hock-joint.

The lard must be made solely from the leaf, and shall be unadulterated, sweet, and good.

The flour must be freshly made, of good sound wheat, high ground, well dressed, in all respects equal to sample furnished. Samples of not less than five pounds must be furnished by bidders, and will be well tested before acceptance.

The sugar must be of good quality, as specified in schedule.

The coffee must be sound and clean, of good quality.

The tea must be of medium quality, clean, and free from adulteration or impurity.

The rice to be choice Carolina.

Bond with approved security will be required of each party to whom a contract may be awarded.

On failure to furnish any article specified in the contract within a reasonable time and of satisfactory quality, after having been ordered, the right is reserved of purchasing in open market or of declaring such contract forfeited; and if a greater price than the contract price be paid for any such article the difference will be charged to the contractor.

Bids will be considered on each item separately. Schedules containing blank forms for bidding, items, and approximate estimates of amounts, will be furnished on application.

Contracts will be awarded only to established manufacturers of or dealers in the articles.

The Secretary reserves the right to reject any or all bids that may be offered and to waive defects.

Samples and proposals must be sent in separate packages. Proposals to

be addressed to the Secretary of the Interior, and indorsed "Proposals for supplies for the Government Hospital for the Insane."

H. M. TELLER,
Secretary of the Interior.

II.

Thereupon the claimant made the following bids, on forms furnished by the Department:

WASHINGTON, D. C., *July* 16, 1883.

To the SECRETARY OF THE INTERIOR:

SIR: I propose to furnish, in compliance with the terms of the specifications hereto attached, all the conditions of which are hereby made a part of this proposal, any or all of the articles named in the accompanying schedule opposite to which prices have been affixed, at the rates and in the quantities therein noted, the same to be delivered at the Government Hospital for the Insane near Washington, D. C.

Check No. 4466, duly certified, on the National Bank of the Republic, for $500, is herewith inclosed, which please return in case this bid is not accepted.

Respectfully,

FRANK HUME,
Wholesale Grocer.

30 *Schedule of supplies for the Government Hospital for the Insane.*

MEATS, PROVISIONS, GROCERIES, FEED, ETC.

No. of item.	Estimated quantity.	Articles.	Rate.	
			Dollars.	Cents.
1	240,000 pounds..	Beef, fresh ..... per pound..	.....	.....
*2	20,000 pounds..	Beef, corned, canned (Armour's Chicago or equal in quality) ..... per pound..	.....	11⅞
3	40,000 pounds..	Mutton ..... do..	.....	.....
4	5,000 pounds..	Veal ..... do..	.....	.....
5	18,000 pounds..	Shoulders, No. 1, good quality and condition ..... do..	.....	8⅜
6	10,500 pounds..	Breasts, No. 1, good quality and condition ..... do..	.....	11½
7	15 dozen ..	Beef tongues, smoked ..... do..	.....	.....
8	25 pounds..	Allspice ..... do..	.....	11¾
9	1,800 pounds..	Apples, evaporated ..... do..	.....	1,
10	10 gross....	Brush blocks, shoe ..... per gross..	2	50
11	40 gross....	Brush blocks, scrub ..... do..	4	40
12	6 gross....	Brush blocks, hair ..... do..	.....	.....
13	13 dozen ..	Brushes (W. W.), medium ..... per dozen..	17	70
14	60 dozen ...	Baking powder (Rumford's), 6-oz ..... do..	1	14
15	25 dozen ...	Buckets, 2-hoop, painted ..... do..	1	45
16	2,550 pounds..	Borax ..... per pound..	.....	14½
17	5 gross ..	Blacking, shoe, Mason's ..... per gross..	2	75
18	350 bushels .	Beans, prime ..... per bushel..	2	35
19	8 boxes ...	Bath-brick ..... per box..	.....	60
20	35 tons.....	Bran ..... per ton..	18	.....
21	400 pounds..	Canary seed ..... per pound..	.....	4½
22	10,000 pounds.	Codfish, No. 1, Banks ..... do..	.....	4⅞
23	47,000 pounds..	Coffee, green, Rio, prime, sample required ..... do..	.....	9½
24	300 pounds..	Coffee, green, Java, prime, sample required ..... do..	.....	18½
25	25 pounds..	Cinnamon ..... do..	.....	14½
26	25 pounds..	Cloves ..... do..	.....	21½
27	200 pounds..	Chocolate, best ..... do..	.....	37
28	2,500 pounds..	Cheese, prime, equal to best N. Y. creamery ..... do..	.....	12½
29	100 dozen ..	Corn, canned, standard 3-lb ..... per dozen..	1	10½
30	4,000 pounds..	Crackers, soda, sample required ..... per pound..	.....	7½
31	1,000 pounds..	Crackers, cream, sample required ..... do..	.....	10½
32	120 pounds..	Candles, adamantine ..... do..	.....	11
33	150 pounds..	Citron, best ..... do..	.....	16
34	1,000 pounds..	Currants, best ..... do..	.....	6½
35	650 pounds..	Corn-starch ..... do..	.....	6½
36	525 pounds..	Farina ..... do..	.....	4½
37	2,000 barrels..	Flour, baker's mixture, 5-lb. sample required ..... do..	.....	2[illegible]

31 *Schedule of supplies for the Government Hospital for the Insane*—Continued.

MEATS, PROVISIONS, GROCERIES, FEED, ETC.—Continued.

No. of item.	Estimated quantity.	Articles.	Rate.	
			Dollars.	Cents.
38	50 barrels	Flour, family, No. 1, 5-lb. sample required ..... per pound		3 33/100
39	100 barrels	Flour, Graham, 5-lb. sample required ..... do		2 83/100
40	500 pounds	Ginger, ground, sample required ..... do		10¾
41	500 pounds	Hemp seed ..... do		4½
42	4 bales	Hops ..... do		35
43	1,200	Handles, broom, No. 2, plain ..... per 100	1	55
44	13 boxes	Macaroni, sample required ..... per pound		10¾
45	15 pounds	Mace ..... do		70
46	1,200 gallons	Molasses, N. O., prime, sample required ..... per gallon		52
47	450 pounds	Mustard, ground, pure, sample required ..... per pound		19¾
48	140 bushels	Meal, corn, family, bolted ..... per bushel		62
49	15 bushels	Meal, rye ..... do		75
50	5,000 bushels	Meal, feed ..... do		60
51	135 tons	Middlings ..... per ton	22	00
52	10 bushels	Malt ..... per bushel	1	60
53	1,150 pounds	Manioca, sample required ..... per pound		17½
54	150 barrels	Mackerel, No. 2 ..... do		5¼
55	25 pounds	Nutmegs, whole, sample required ..... do		65
56	675 gallons	Oil, astral, with cans, equal to Pratt's ..... per gallon		17½
57	100 gallons	Oil, lard ..... do		90
58	1 case	Oil, olive, Lucca, sample required ..... per bottle		
59	600 pounds	Peaches, dried, sample required ..... per pound		
60	8 cases	Peas canned, sample required ..... per dozen	2	76
61	17 barrels	Pickles, cucumbers ..... per barrel	9	50
62	300 quarts	Pickles, assorted, sample required ..... per quart		
63	100 pounds	Pepper, black, ground, sample required ..... per pound		14½
64	1,600 bushels	Potatoes ..... per bushel		83
65	1,500 pounds	Prunes, sample required ..... per pound		8¾
66	58 boxes	Raisins, London layer ..... do	2	50
67	600 pounds	Raisins, Valencia ..... do		8
68	3,500 pounds	Rice, Carolina, best, sample required ..... do		5¾
69	600 pounds	Sugar, cut-loaf, A No. 1, sample required ..... do		9¾
70	30,000 pounds	Sugar, granulated, A No. 1, sample required ..... do		9¾
71	600 pounds	Sugar, pulverized, A No. 1, sample required ..... do		9¾
72	16,000 pounds	Sugar, N. O., good quality, sample required ..... do		8 1/16
73	80 sacks	Salt, fine table ..... per pound	1	40
74	25 pounds	Salt, g. a ..... do		½
75	30 bushels	Salt, rock ..... per bushel		60
76	6 cases	Safety-fuses, sample required ..... per gross		
77	25 pounds	Saltpeter ..... per pound		6½
78	1,960 pounds	Soda, sal ..... do		1½
79	3,000 pounds	Starch, sample required ..... do		4½
80	400 pounds	Soap, Castile, genuine, white and mottled, sample required, (white, 14¾ per pound) mottled ..... per pound		9
81	3,650 pounds	Soap, sand, sample required ..... do		6½
82	20,500 pounds	Soap, laundry, sample required ..... do		3 1/16
83	1,200 gallons	Sirup, best golden, sample required ..... per gallon		42
84	3,000 pounds	Tea, Japan, uncolored, good quality, sample required ..... per pound		26
85	2,200 pounds	Tea, Oolong, good quality, sample required ..... do		37
86	1,000 dozen	Tapers, wax, best quality, sample required ..... per dozen		
87	600 gross	Tampico, gray ..... per gross		19½
88	500 gross	Tampico, white ..... do		17½
89	3,000 pounds	Tobacco, natural leaf, sample required ..... per pound		25½
90	1,000 pounds	Tobacco, navy, sample required ..... do		31½
91	15 barrels	Whisky, sample required ..... per gallon	1	87
92	5 dozen	Washboards, fine ..... per dozen	2	75
93	20 gallons	Wine, sherry, best Spanish ..... per gallon	2	37
94	150 bushels	Screenings ..... per bushel		70
95	2,400 bushels	Oats ..... do		50
96	800 bushels	Corn ..... do		65
97	8,000 pounds	Shucks ..... per pound		60
98	200,000 pounds	Straw, rye, oats, or beardless wheat, unbaled ..... do		¾
99	10 dozen	Cuspadores, tin, sample required ..... per dozen	1	80
100	20 dozen	Cuspadores, paper, sample required ..... do		
101	2 dozen	Coolers, porcelain-lined, 6-gallon ..... do	84	00
102	6 dozen	Chimneys, argand ..... do		35
103	12 dozen	Globes, lantern ..... do		95
104	24 dozen	Globes, for gas, open-base, medium ..... do		
105	24 dozen	Preserve jars, Mason's ..... do	1	42
106	144 dozen	Tumblers ..... do		40
107	72 dozen	Wicks, lamp ..... do	1	10
		MEDICAL SUPPLIES.		
76	4 barrels	Alcohol ..... per gallon	2	28
77	5 barrels	Sweet catawba ..... do		72½
78	1 barrel	Brandy, California ..... do	2	75
79	64 dozen	Bass ale ..... per dozen	1	88

III.

The claimant's bids on sixteen articles having been accepted, the following contract therefor was entered into between the parties (and the required bond was given):

"Articles of agreement made and entered into this ninth day of August, A. D. 1883, between Frank Hume, doing business under the firm name and style of ——— ———, of the city of Washington, District of Columbia, of ———, his heirs, executors, and assigns, of the first part, and M. L. Joslyn, Acting Secretary of the Interior, acting for and on behalf of the United States, of the United States, of the second part, witnesseth:

"That the said Frank Hume, for the consideration hereinafter mentioned and contained, and under the penalty expressed in a bond bearing even date herewith, covenants and agrees to furnish during the fiscal year ending June 30, 1884, such articles as may be required by the Government Hospital for the Insane, near Washington, D. C., and as have been accepted in the proposal of the said Frank Hume, dated July 16, 1883, to wit: Items in the proposal numbered 2, 9, 19, 32, 42, 56, 71, 78, 79, 89, 90, 91, 97, 102, 103, in the schedule for groceries, and item 77, for 5 bbls. sweet catawba, at the rates specified in said proposal.

"The said Frank Hume further agrees to furnish the above-mentioned items in accordance with, and subject to, the conditions expressed in his proposal and in the specifications hereto attached, which proposal and specifications enter into and form a part of this contract; and also in accordance with the samples furnished.

32 "And the said M. L. Joslyn, Acting Secretary of the Interior reserving the right to order a greater or less quantity of each or every article named or referred to in this agreement, as the public service may require, hereby agrees to pay or cause to be paid, on behalf of the United States to the said Frank Hume, his heirs, executors, or assigns, for all the articles delivered and accepted under this contract, the prices specified in the proposal and contract.

"Neither this contract nor any interest therein shall be transferred by the said Frank Hume to any other party; and any such transfer shall cause the annulment of the contract so far as the United States are concerned. All rights of action, however, to recover for any breach of this contract by the said Frank Hume are reserved to the United States.

"No member of, or delegate to, Congress is or shall be admitted to any share or part of this contract, or to any benefit which may arise herefrom.

"In witness whereof the parties aforesaid have hereunto set their hands and affixed their seals on the day and year first above written.

"FRANK HUME, [SEAL.]
"M. L. JOSLYN, [SEAL.]
"*Acting Secretary of the Interior.*"

IV.

He furnished under said contract all the articles included under items Nos. 2, 9, 19, 32, 42, 56, 71, 78, 79, 89, 90, 91, 102, 103, and has been paid therefor according to the contract.

He also furnished in two or three lots in the latter part of the year 1883, 6,720 pounds shucks under item No. 97, with memorandum—bills accom-

panying the delivery thereof, with the price carried out, at 60 cents per pound, the whole aggregating $4,032. For the shucks he has not been paid.

V.

At the time said contract was made shucks were of the market value of from $12 to $35 a ton, according to quality, and whether they were hackled or unhackled; and those furnished by the claimant were of the market value of $35 a ton, or 1¾ cents per pound, aggregating, for all that were delivered, $117.60.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entitled to recover $117.60 and no more.

VIII.—*Opinion of the court.*

RICHARDSON, Ch. J., delivered the opinion of the court:

The Secretary of the Interior in 1883 advertised for proposals for furnishing to the Government Hospital for the Insane in Washington a very large quantity of supplies, consisting of more than a hundred different articles, for all but eleven of which the claimant made bids according to the advertisement, upon printed forms furnished by the Department.

The advertisement provided that "Bids will be considered on each item separately." Those of the claimant upon sixteen items were accepted, and among them was the following, for which he was the only bidder:

No. of item.	Estimated quantity.	Articles.	Rate.	
			Dollars.	Cents.
*	* *	* * *	*	*
97	8,000 pounds...	Shucks ..... per pound..	.....	60
*	* *	* * *	*	*

33 Articles of agreement were entered into between the claimant and the Secretary of the Interior, with schedules attached in the printed form used for the proposals, with all the hundred and more items thereon, and in which the price was carried out for each of the sixteen items of the accepted bids of the claimant, including that for shucks as above, according to his proposals.

At the time the contract was made shucks were worth from $12 to $35 a ton, or from 6 mills to 1¾ cents a pound, while the claimant was to receive nearly forty times as much as the highest value.

That an agreement to pay $1,200 a ton for shucks, actually worth not more than $35 a ton is a grossly unconscionable bargain, defined in Bouvier's Law Dictionary to be "a contract which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept on the other," nobody can doubt. Such a contract, whether founded on fraud, accident, mistake, folly, or ignorance, is

void at common law. It is not necessary to invoke the aid of a court of equity to reform it. Courts of law will always refuse to enforce such a bargain, as against the public policy of honesty, fair dealing, and good morals.

Judge Story, in his work on Equity Jurisprudence (vol. 1, sec. 188), in enumerating certain classes of cases in which courts of equity will interfere to relieve against fraud, says, "First, fraud, which is dolus malus, may be actual, arising from facts and circumstances of imposition, which is the plainest case. Secondly, it may be apparent from the intrinsic nature and subject of the bargain itself, such as no man in his senses, and not under delusion, would make on the one hand, and no honest and fair man would accept on the other, which are inequitable and unconscientious bargains, and of such even the common law has taken notice."

In the early case of James v. Morgan (1 Living., 111), frequently cited and always with approval, the plaintiff sued on a contract by which the defendant agreed to pay for a horse purchased a barleycorn a nail, and doubling at every nail in the horse's shoes. There were thirty-two nails, and doubling at every nail would make such a quantity of barley as to require the defendant to pay about $2,000 for the horse. The court directed the jury to disregard the contract, and to give the value of the horse, and they assessed the damages in pounds sterling, at less than $40.

So in Baxter v. Wales (12 Mass., 365), which was a suit at law upon notes given for the hire of two cows, wherein the defendant promised to return each cow in one year and pay $6 in cash, and if not then returned to pay $6 a year until redelivered. One cow was returned in fifteen months and the other in five years. The court held that the agreement to pay at the rate of $6 per annum for the use of each one of the cattle, as stipulated in the notes, in case the defendant should fail to perform his contract at the end of the year, was unconscionable, and the jury was directed to assess damages at $6 on each note for one year and the actual value for the use of the cows thereafter.

This was in Massachusetts, about the year 1814, when it is understood the value of cows sold in the market was from $10 to $15 a head or thereabouts.

Again, in the case of Leland v. Stone (10 Mass., 459), upon a warranty deed of several parcels of land. It appeared that one of the parcels had been previously conveyed to the grantor's son, who had erected a
34 dwelling-house thereon and was in exclusive possession, of which the grantor had knowledge. Under direction of the court the jury gave nominal damages, only on the ground that the parcel so previously conveyed was inserted in the deed by mistake. The court in its opinion cited the case of James v. Morgan and other cases, and said, there is not in either of these cases any evidence of actual fraud or deception on the part of the plaintiff at the time of making the bargain. The fraud, if it is necessary to suppose any in this case, consisted in afterwards taking advantage of the defendant's ignorance or mistake, and of attempting to enforce the performance of a contract, such, as Lord Hardwicke expresses it, "as no man in his senses would make, or as no honest man would come into."

These citations are sufficient to show that in suits upon unconscionable agreements the courts of law will take the matter in their own control

and will, without the intervention of courts of equity, protect the parties against their enforcement.

If it be so in suits on contracts between private parties who act by and for themselves, how much more is it so in suits on agreements by the United States, acting always through public officers, who are mere agents, required to act in good faith towards their principal according to the laws of the land, as everybody dealing with them are bound to know.

There is no finding by the court of actual fraud by any of the persons engaged in making the contract now under consideration. The unconscionable price inserted for shucks was no doubt a mere accident, perhaps from an idea that it was the price per hundred pounds instead of per pound, as printed in the proposals and contract, and from neglect to change the printed words accordingly, which, if it had been done, would have fixed the price at $12 a ton, the very price which the findings show to have been the lowest value of shucks of any kind at that time. But however it may have happened, we hold, as was held in the case of Leland v. Stone, from which we have quoted the words of the court, that a contract may be held unconscionable without proof of actual fraud at its inception if its enforcement would be unconscionable.

It would be a fraud upon the United States to enforce such a contract as the one now in suit, and it never can be done through the Court of Claims.

The contract as to the price to be paid for the shucks is disregarded, and the claimant will have judgment for the actual value of all that were delivered, which is found to be $35 a ton, amounting to $117.60.

35 IX.—*Final judgment of the court.*

At a Court of Claims held in the city of Washington, on the 3d day May, 1886, judgment was ordered to be entered as follows:

The court, on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said Frank Hume do have and recover of and from the United States the sum of one hundred and seventeen dollars and sixty cents (117.60.)

36 X.—*Application of claimant for and allowance of appeal.*

And now comes the claimant in this cause and prays for the allowance of an appeal from the judgment rendered herein to the Supreme Court of the United States.

FRANK HUME,
By ROBERT CHRISTY,
His Attorney.

Filed June 25, 1886.

AT CHAMBERS.

Allowed.

WILLIAM A. RICHARDSON,
Chief Justice.

June 25, 1886.

37

XI.

Application of defendants for and allowance of appeal.

From the judgment rendered in the above-entitled cause on the third day of May, 1886, in favor of the claimant, the defendants, by their Attorney-General, on the first day of July, 1886, make application for and give notice of an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Ass't Att'y General.

Filed July 1, 1886.

AT CHAMBERS.

Allowed.

WILLIAM A. RICHARDSON,
Chief Justice.

July 1, 1886.

38

In the Court of Claims.

FRANK HUME
vs.
THE UNITED STATES. } No. 14612.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law therein, of the opinion of the court, of the final judgment of the court, of the application of the claimant, and of the defendants for allowance of appeal to the Supreme Court of the United States and of the allowance of said appeals by Chief Justice Richardson.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington City this 10th day of September, A. D. 1886.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 376. Frank Hume, appellant, vs. The United States; and No. 377, The United States, appellant, vs. Frank Hume. Court of Claims. Filed October 1, 1886.

4873——4

Office Supreme Court U. S.
FILED.
NOV 11 1889
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

FRANK HUME, *Appellant*,
vs.
THE UNITED STATES.
} No. 102.

THE UNITED STATES, *Appellant*,
vs.
FRANK HUME.
} No. 103, Cross appeals.

BRIEF FOR FRANK HUME, APPELLANT.

ROBERT CHRISTY,
JOHN C. FAY,
Atty's for Frank Hume, appellant.

R. O. Polkinhorn, Printer, 632 & 634 D Street, N. W.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

FRANK HUME, *Appellant*,
vs.
THE UNITED STATES.
} No. 102.

THE UNITED STATES, *Appellant*,
vs.
FRANK HUME.
} No. 103, Cross appeals.

BRIEF FOR FRANK HUME, APPELLANT.

Statement of the Case.

This was a suit brought in the Court of Claims by the appellant to recover the balance due him for goods furnished to the Government Hospital for the Insane, under contract between him and the Secretary of the Interior, dated August 9th, 1883, set out on page 25 of the record; by which the appellant under the penalty of a bond was required to "furnish during the fiscal year ending June 30, 1884, such articles as

may be required by the Goverrment Hospital for the Insane in Washington, D. C., as have been accepted in the proposal of said Frank Hume, dated July 16, 1883, to wit: Items in the proposal number 2, 9, 19, 32, 42, 56, 71, 78, 79, 89, 90, 91, **97**, 102 and 103 in the schedule for groceries, and item 77 for five barrels of sweet catawba at the rates specified in said proposal." The contract was entered into after public advertisement and was awarded to the appellant as the lowest bidder. The advertisement and proposals are set out on pages 21, 22, 23 and 24 of the record. The appellant furnished during the fiscal year all the goods ordered from time to time and has been paid in full his contract price, except the sum of $4,032, for which balance this suit was brought, (see petition, pages 1 and 2 of the record.) [An error as to the amount of goods furnished is stated in the petition. The total amount of goods furnished aggregated $9,140 08, on account of which the sum of $5,108.08 has been paid, leaving the balance of $4,032.61, which balance is correctly stated, but the other amounts are misprinted in the petition]. The court below, in its finding, No. 4, applied the whole balance due under the contract to item **97**, 6720 pounds of shucks; treating the contract as a separate contract for each item, and held that the price for shucks was unconscionable, refused a recovery upon that item, at the contract price, but gave judgment for the same at the price which the court found to be the market value of the shucks delivered, at the dates of their various deliveries. From the judgment refusing a recovery at the contract price, this appeal is prosecuted by the appellant, Frank Hume. The United States has also taken a cross appeal.

Assignment of Errors.

1st. The court erred in permitting evidence to be introduced to vary the terms of the written contract sued on; and in refusing to suppress the depositions on this subject upon the motion of the appellant, Hume, set out on page 4 of the record; and in founding a finding of fact upon such incompetent and inadmissible testimony, to wit: Finding V. Record, p. 26.

2d. The court erred in refusing a recovery upon the contract sued on, set out in the record, page 25.

3d. The court erred in awarding the sum of $117.60 to the appellant instead of the sum of $4,032.

Brief.

The first assignment of error grows out of the failure of the court to suppress incompetent and inadmissible testimony upon the motion of the appellant, which motion is found on page 4 of the record, and the depositions which we sought to suppress are contained on pages 4 to 20. By reference to these depositions, and to the motion, it is shown, that the appellant resisted the introduction of any testimony to alter or vary the terms of the written contract between the appellant and the United States; but notwithstanding the court below refused to suppress the testimony, thus objected to, and founded upon it their fifth finding of fact, page 26 of the record. In no other way can an appellant challenge the findings of fact or the competency of testimony upon which they are based, except by a motion to suppress; and it is respectfully submitted that the appellant has a right to review in this Court the rulings of the court

below in respect to the inadmissibility and incompetency of evidence. The question is preserved in the record on appeal.

In the present case the contract sued on was made after due advertisement on the part of the Government; sealed proposals, written on printed blanks furnished by the United States, were submitted by the appellant. These proposals were subjected to the scrutiny of the committee appointed by the Secretary of the Interior to open the bids, and after all this was done a written contract was entered into, by which the written advertisement and written proposal were made a part of the contents.

The appellant was the lowest bidder on some sixteen items, and the contract was for the sixteen items —not sixteen contracts for one item each, but sixteen items as an entirety; and it is respectfully urged that in any event it would be incumbent upon the appellee to show that the aggregate amount of the contract was unconscionable, and that he should not be entitled to single out of the contract the price for a single item, while the prices for other items might be as much too low as the item so selected might be too high ; that it was that issue that was tendered by the appellant in the replication to the special plea set out on pages 3 and 4 of the record.

That the Court of Claims has no equity jurisdiction or power to reform contracts, has been frequently decided by the Supreme Court, and the question which is now clearly presented by this record is, has that Court—a Court of strict legal and statutory jurisdiction—the power to set aside the written contract between the parties, or to receive evidence

as to the market value of articles contracted to be furnished at stipulated prices, not only in the absence of fraud, but in the face of the opinion of the Court (p. 28) that there actually was no fraud to set aside the contract of the parties. It is respectfully submitted that the learned Court below erred in this regard.

The contract sued on was made after public advertisement, and upon competitive bidding; the appellant was the lowest bidder, and was so adjudged by the Secretary of the Interior who had the right to reject any part of his bid (Rec. p. 22), and the contract was awarded, after careful examination of the bids, and even then the United States was not obligated to order a single pound of any of the goods, which the appellant was bound to supply if ordered, and in the quantities and at the times so ordered, which might be at any time during the then coming year. The appellant took the chance of a rising market during the future year; and no matter what calamity might ensue that should render his contract ruinous to him, he could recover no more than his contract price. Is it then reasonable that a test of the market value of one commodity at the *date of the contract* should be applied to the recovery?

Notwithstanding the United States was not bound to order any of the goods of the price complained of, yet it did give three orders for different quantities at different times, (Finding IV., pp. 25, 26), and with each delivery the appellant delivered memoranda bills with the price carried out at the contract rate. It was not till the end of the contract term that any

objection was made. After the goods were consumed the contract price was refused ; and there existed no executive officer of the United States who was authorized to pay for these goods at any other than the contract price. The appellant was obliged to sue in the Court of Claims, and his only right of action was upon his written contract made after due advertisement. He could not sue for a *quantum meruit*, for, unless the Secretary of the Interior complied with the law, his acts did not bind the United States. See Sections 3706, 3744, Rev. Stat. (*South Boston Iron Works* vs. *United States*, 118 U. S., p. 37.) And in the judgment of the Court below he is barred from recovery on his contract, because the contract price of one article therein is in excess of the market rate at the time the contract was entered into ; and the Court holds parol evidence admissible to overthrow the written stipulation of the contract entered into without fraud, and let to the lowest bidder after due competion.

The rule established by the authorities is "That it is inadmissible to contradict or vary the terms of a valid written instrument."

As stated by Greenleaf, "The duty of the court in such cases is to ascertain, not what the parties may have secretly intended, as contradistinguished from what their words express, but what is the meaning of the words they have used?" (Greenleaf on evidence, Vol. 1, p. 277.)

That courts have enforced this statutory and reasonable rule with inflexibility, even in cases seemingly working great hardship, is shown in the illustrations given in the subsequent section (281) :

"Where a policy of insurance was effected on goods 'in a ship or ships from Surinam to London,' parol evidence was held inadmissible to show that a particular ship in the fleet, which was lost, was verbally excepted at the time of the contract."

"So, where a policy described the two *termini* of the voyage, parol evidence was held inadmissible to prove that the risk was not to commence until the vessel reached an intermediate place." * * So, where a contract was for the sale and delivery of 'ware potatoes,' of which there were several kinds or qualities, parol evidence was held not admissable that the contract was in fact for the best of those kinds."

We think that courts have failed to allow parol evidence to be offered to impeach a written instrument, unless to show "the instrument was altogether void, or that it *never* had any binding force, or legal existence, either by reason of fraud, or for want of due execution and delivery, or for the illegality of the subject matter." Neither of these factors exist in the present case; and the appellant is at a loss to see upon what principle evidence to establish the market price can be received. If that be excluded the fifth finding of fact (Record, p. 26,) must, of necessity, fall.

After a very careful examination of the authorities, bearing upon the question of the power of the courts to arrest the enforcement of contracts according to their terms, we think the following is a fair statement of the principles that may be regarded as judicially settled.

Such contracts must be shown to be tainted with fraud, illegal in their nature, or obnoxious to stat-

utes prohibiting usury, or appear on their face unreasonable.

The contract under consideration, is just, fair and reasonable upon its face, and if considered as an entirety, must be regarded as in its nature reasonable and just. It was, in many respects, oppressive on the appellant, but in none upon the United States—because there was no obligation upon the Department officials, executing the contract on the part of the United States, to order any article embraced therein, allowing a reasonable profit to the appellant, but a power expressly reserved to them to order "more or less" of such articles as, by an advance in market rates, would entail actual loss upon the appellant.

"If there be *any* consideration, the court will not weigh the extent of it. It has no means of scrutinizing the various hidden motives and reasons that may have influenced parties, and induced them to enter into the contract, nor can it determine upon the prudence or propriety of the transaction. If parties choose to enter into unwise and improvident bargains they must abide by the consequences of their own rashness and folly; they have contracted for themselves and the court cannot contract for them," is the rule as stated in *Addison on Contracts, page* 12.

The early English case, cited in the opinion of the Court of Claims, (meagerly and unsatisfactorily reported,) shows that, upon the face of the contract, it was apparent that it was unreasonable; it was aptly called a "catching bargain;" and it seems to be the case referred to by Lord Hardwick, as quoted in

Story's Equity Jurisprudence, cited in the opinion of the Court.

The price to be paid was not expressed in figures, but was to be arrived at by an arithmetical progression, which the Court could see must have been the result of imposition, if not fraud; when the case is scrutinized the element of fraud will be found to be the real ground of the decision.

The case of *Baxter* vs. *Wales*, (12 Mass., 365,) cited in the opinion of the Court, it is submitted, does not sustain the doctrine there contended for. An examination of the case will show that the question of usury, as well as the rule as to the measure of damages for the breach of a contract, controlled the decision rather than the unreasonable character of the contract. The fact is, the plaintiff recovered six dollars for the use of the cow for one year; how six dollars could be reasonable for the first year and unreasonable for the second year cannot be well understood,—and it was not upon that ground that the measure of damages was reduced. The Court held that the six dollars for the first year was all the contract required; that it was a contract for *one year only*; at the expiration of the year the defendant was only liable for the damage occurring for the detention of the cow, and that the Court would not allow an unreasonable rule of damage to take the place of the well established and reasonable one. In fact it was in the nature of a penalty, and the substitution of actual damage for a fixed penalty is a familiar and well defined rule, and that is really all that *Baxter* vs. *Wales* decides.

Apart from the question heretofore discussed, the appellant insists that the *mere* inadequacy of consideration or the reverse of the proposition, the inadequacy of the subject matter which is governed by the same principles and rules; is not sufficient ground to set aside a contract.

In Pomeroy's Equity Jurisprudence, Section 925, the rule applicable in either instance is thus stated :

> "The rule is well settled that where the parties were both in a situation to form an independent judgment concerning the transaction and acted knowingly and intentionally, *mere inadequacy* in price *or in subject matter*, unaccompanied by other inequitable indidents, is *never of itself* a sufficient ground for cancelling an executory or executed contract." * * And when the contract is, after competition, the same author says in the same Section, "When a sale is made at public auction, conducted in a fair and open manner, the rule is even stronger,—for fraud *cannot* be inferred from any inadequacy in price *without other* circumstances showing bad faith."

So, in the case of *Erwin* vs. *Parham*, 12 How., 200, the court there held that a purchase of a debt of $260,000, secured by a mortgage, at a public sale, for $600, would not, from the discrepancy of price, show the sale bad; and reversed the court below that had dismissed a bill that showed that state of facts on its face.

It may be true that, as the case is presented in the findings of the Court of Claims, an apparent hardship might accrue to the United States by the enforcement of the contract, and, as is usually the case, the

apparent hardship is made the occasion for the establishment of a bad precedent, which probably will eventually result to the greater injury of the appellee in the future than the strict enforcement of its contract obligations according to their tenor and terms.

There seems to be no reason why the doctrine of *caveat emptor* should not apply with equal force to the lettings of public contracts as to the transactions of private citizens.

The judgment should be reversed, and the Court of Claims be directed to enter judgment in favor of the appellant in the sum of four thousand two hundred dollars.

ROBERT CHRISTY,
JOHN C. FAY,
Atty's for Frank Hume, appellant.

Office Supreme Court, U. S.
FILED.
NOV 11 1889
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

FRANK HUME, APPELLANT,
vs.
THE UNITED STATES. } No. 102.

THE UNITED STATES, APPELLANT,
vs.
FRANK HUME. } No. 103.

APPEAL FROM THE COURT OF CLAIMS.

WM. A. MAURY,
Assistant Attorney-General.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

FRANK HUME, APPELLANT, *vs.* THE UNITED STATES.	No 102.
THE UNITED STATES, APPELLANT, *vs.* FRANK HUME.	No. 103.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

These are cross appeals, and will be considered in their order

HUME V. UNITED STATES.

Frank Hume, the appellant, in response to an invitation of the Secretary of the Interior extended by advertisement, in the usual way, sent

in proposals to furnish the United States, for the use of the Government Hospital for the Insane, with various supplies, and, amongst other things, with 8,000 pounds of shucks.

The proposals were made with reference to a printed schedule of articles and of the quantity needed (pp. 23, 24).

The bids for each article were to be separately considered.

The bids of the appellant were accepted for fifteen articles, including bid No. 97 to furnish 8,000 pounds of shucks at 60 cents per pound. The following is the form in which this bid was made:

No. of item.	Estimated quantity.	Articles.	Rate.	
			Dollars.	Cents.
*	* *	* * *	*	*
97	8,000 pounds.....	Shucks.....per pound.	.....	60
*	* *	* * *	*	*

A formal contract was entered into between Hume on the one part and the Secretary of the Interior on the other, in which Hume agreed to furnish the shucks, etc., in accordance with the proposal and specifications (p. 25).

Hume furnished 6,720 pounds of shucks under item No. 97, with memorandum bills accompanying the delivery thereof with the price carried out at 60 cents per pound, the whole aggregating $4,032. But the claimant has not been paid for the shucks.

It is to recover this sum of $4,032 for 6,720 pounds of shucks, at 60 cents per pound, that this suit is brought (pp. 1, 2).

The United States filed the usual traverse to the petition; it also pleaded specially that the real contract was to furnish shucks at 60 cents per hundred weight; that claimant was attempting to practice a fraud against the United States in endeavoring to enforce his claim for shucks at 60 cents per pound (p. 3).

The claimant replied to this plea, showing how he had followed the official forms; that no intimation of mistake occurred until after the contract had expired; that he had lost on some articles, and on the whole did not receive more than a fair and reasonable profit, denying fraud and protesting absolutely good faith (pp. 3–4).

According to Finding V, shucks of the kind furnished by the claimant were of the market value of $1\frac{3}{4}$ cents per pound, and were worth, at that rate, $117.60, for which amount the court gave judgment for the claimant. From this judgment the claimant appeals.

ARGUMENT.

The Court of Claims refused to allow the claimant compensation for the shucks furnished at the rate of 60 cents per pound, on the ground—

> That an agreement to pay $1,200 a ton for shucks, actually worth not more than $35 a ton, is a grossly unconscionable bargain, defined in Bouvier's Law Dictionary to be "a contract which no man in his senses, not under delusion, would make on the one hand, and which no fair and honest man would accept on the other," nobody can doubt. Such a contract, whether founded on fraud, accident, mistake, folly, or ignorance, is void at common law. It is not necessary to invoke the aid of a court of equity to reform it. Courts of law will always refuse to enforce such a bargain, as against the public policy of honesty, fair dealing, and good morals." (Pp. 26, 27.)

The court then proceed to discuss the authorities sustaining the proposition thus laid down.

To the authorities relied on by the court we may add the case of Scott *v.* United States (12 Wall., 443, 445), in which this court said:

> If a contract be unreasonable and unconscionable, but not void for fraud, a court of law will give to the party who sues for its breach damages, not according to its letter, but only such as he is equitably entitled to.

But there is another ground on which the judgment may be sustained, and that is, want of authority in the Secretary of the Interior to bind the United States by any such contract, the facts of the case showing that both Hume and the Secretary of the Interior were, in making such a contract, acting contrary to the known wishes of an absent principal.

Undoubtedly, the object of section 3709, Revised Statutes, requiring that all purchases and contracts for supplies shall be made by advertising a sufficient time previously for proposals, except where the public exigencies require immediate delivery, was to enable the Government through the rivalries of bidders to make better terms than it could do by going into the market in the ordinary way.

That this intention of the law was known to the claimant, Hume, can not be doubted for a moment.

That Hume knew that the market price of oats was $1\frac{3}{4}$ cents per pound, when he put in his bid, can not be doubted.

That Hume knew it was unlawful for him to receive $1,200 a ton for shucks and for the Secretary of the Interior to bind the United States to pay him for shucks at that rate, when the article could be bought in open market at $35 a ton, can not be doubted.

Hume was dealing with an officer deriving all his powers from a public statute, which statute Hume knew conferred no such power as must have existed to give the contract validity.

The following section from Story on Agency is appropriate to this case:

> SEC. 307 *a*. In respect to the acts and declarations and representations of public agents, it would seem that the same rule does not prevail which ordinarily governs in relation to mere private agents. As to the latter (as we have seen), the principals are in many cases bound, where they have not authorized the declarations and representations to be made. But in cases of public agents, the Government, or other public authority, is not bound, unless it manifestly appears that the agent is acting within the scope of his authority, or he is held out as having authority to do the act, or is employed, in his capacity as a public agent, to make the declaration or representation for the Government. *Indeed, this rule seems indispensable, in order to guard the public against losses and injuries arising from the fraud or mistake, or rashness and indiscretion of their agents. And there is no hardship in requiring from private persons, dealing with public officers, the duty of inquiry, as to their real or apparent power and authority to bind the Government.*

If, then, Hume intentionally put in the bid to supply shucks at $1,200 a ton, or 60 cents per pound, he must have known that no public officer

had power to make such a bargain as his bid invited. No sane man could have a doubt on that proposition.

Suppose a public exigency had required an immediate supply of shucks, and a public officer had gone to Hume and agreed to pay him 60 cents a pound for shucks, can the wit of man suggest a way by which such a contract could bind the Government? Such a contract would be too manifestly void to admit of argument.

Now, while it is clear that when an officer, authorized to go into the market and buy supplies without advertising when "the public exigencies" require it, has decided that such an exigency exists, his decision is binding on the United States, as a general rule, it has, at the same time, been also held, that where the facts show plainly that no such exigency could have existed the Government is not bound by the officer's manifest abuse of discretion (15 Opinions, 253, and 10 Opinions, 28).

That the evidence so strenuously objected to by the claimant, and which he moved to suppress (p. 4), was admissible to show the state of

the market and other facts surrounding the parties when the contract was made, is too clear to need discussion. Without such evidence it could not be told whether the public agent had exceeded his powers or not, for the court can not take notice *ex officio* of the facts established by the testimony.

UNITED STATES v. HUME.

The ground of this appeal is that Hume's attempt to enforce the contract as to shucks is an attempt to practice a fraud against the United States, by which he has forfeited his right to recover anything under section 1086, Revised Statutes. While there is no finding of fraud by the court below it may be open to this court to infer it from the fact of the claimant's having urged so unconscionable a claim before the accounting officers of the Government, and from all the facts found by the court below.

It is submitted, therefore, that the judgment of the Court of Claims should stand.

WM. A. MAURY,
Assistant Attorney-General.

Exhibit E

Office of the Second Assistant Postmaster General
Nov 13. 1885

Tracing showing Route No 38146, term ended June 30. '82.

No. 899.
U.S.
Barlow et al.
} p. 96.

OURAY.
LAKE CITY.
Mineral Pt.
Tellurium
Animas Forks.
Burrows Park
Sherman.
Antelope Spgs.
Wagon Wheel Gap.
Barnum.
South Fork.
Del Norte.
Rio Grande.
Wayside.
Alamosa
Garland
Ft. Garland.

Route prior to order of Oct. 1. '78.

Ouray.
Lake City.
Mineral Point.
Tellurium
Animas Forks.
Burrows Park
Sherman.
Antelope Springs.
Wagon Wheel Gap.
South Fork.
Del Norte.
Rio Grande
Wayside.
Alamosa
Garland
Ft. Garland

Route immediately after order of Oct. 1. '78.